

The City Council of the City of Mattoon held a regular meeting in the Council Chambers at City Hall on November 2, 2004 at 7:00 p.m. after a 6:30 p.m. caucus session.

Mayor Carter presiding.

Mayor Carter led the Pledge of Allegiance to the United States of America.

The following members of the Council answered roll call: YEA Commissioner Mark Donnell, YEA Commissioner Harold Gambill, YEA Commissioner Jerrold Hesse, YEA Commissioner David Schilling, YEA Mayor David E. Carter.

Commissioner Donnell seconded by Commissioner Gambill moved to approve the minutes of the regular meeting held on October 19, 2004.

Mayor Carter opened the floor for discussion. No discussion.

Mayor Carter declared the motion carried by the following vote: YEA Commissioner Donnell, YEA Commissioner Gambill, YEA Commissioner Hesse, YEA Commissioner Schilling, YEA Mayor Carter.

Commissioner Schilling seconded by Commissioner Gambill moved to approve bills and payroll for the second half of October.

**Bills & Payroll for the second half of October**

**General Fund**

Payroll	\$ 215,614.94
Bills	<u>\$ 42,933.31</u>
Total	\$ 258,548.25

**Hotel Tax Fund**

Payroll	\$ 1,503.23
Bills	<u>\$ 2,110.56</u>
Total	\$ 3,613.79

**Festival Management**

Bills	<u>\$ 2,064.92</u>
Total	\$ 2,064.92

**Insurance & Tort Judgment**

Bills	<u>\$ 1,748.55</u>
Total	\$ 1,748.55

**Midtown TIF Fund**

Bills	<u>\$ 3,180.55</u>
Total	\$ 3,180.55

**Capital Project**

Bills	<u>\$ 39.81</u>
Total	\$ 39.81

**Water Fund**

Payroll	\$ 31,704.18
Bills	<u>\$ 122,379.53</u>
Total	\$ 154,083.71

**Sewer Fund**

Payroll	\$ 33,416.99
Bills	<u>\$ 62,410.23</u>
Total	\$ 95,827.22

**Cemetery Fund**

Payroll	\$ 2,200.94
Bills	\$ 3,207.12
Total	\$ 5,408.06

**Health Insurance Fund**

Bills	\$ 15,567.85
Total	\$ 15,567.85

**Revolving Loan Fund**

Bills	\$ 1,120.60
Total	\$ 1,120.60

**Motor Fund Tax Fund**

Bills	\$ 7,912.57
Total	\$ 7,912.57

Mayor Carter opened the floor for discussion. No discussion.

Mayor Carter declared the motion carried by the following vote: YEA Commissioner Donnell, YEA Commissioner Gambill, YEA Commissioner Hesse, YEA Commissioner Schilling, YEA Mayor Carter.

The City of Mattoon held a public hearing on an application for a franchise agreement, providing cable services within the City, between the City of Mattoon and Consolidated Communications Network Services, Inc. City Attorney/Treasurer J. Preston Owen opened the public hearing at 7:03 p.m. in the City of Mattoon Council Chambers with all Council members in attendance, and introduced Mr. Matt Hallam and Ms. Laura Zuhone as representatives of Consolidated Communications Network Services, Inc. Mr. Hallam proceeded with responding to questions of the Council including competing rates; connecting through phone lines; considering the proposal in other areas of Charleston and Effingham; providing a public access channel with specifications to be determined by Council; providing customers with a choice of contracts; determining the benefits as 100% digital, availability of premium channels at low-end contracts, and better quality; retaining base jobs with creation of jobs as needed; testing in multiple areas; and expressing a long-term commitment. Police Chief Larry Metzelaars questioned Mr. Hallam with regard to broadcasting weather alerts, and received a response as the availability of an emergency alert system. Attorney Owen called for questions of the public. Mr. Herb Meeker of the Journal Gazette inquired as to the revenues the City would receive from Consolidated and revenues received from Mediacom, a current cable franchise holder. Treasurer Owen replied that the City would receive five percent of annual gross revenues, and had received approximately \$172,000 from Mediacom for the 2003/2004 fiscal year. Mr. Meeker requested confirmation that the City has no control over the rates. City Administrator Richard Underkofler responded that the City cannot determine the rates due to governmental deregulation. Attorney Owen called for further questions of the public. With no further questions, Attorney Owen closed the public hearing at 7:15 p.m.

Mayor Carter seconded by Commissioner Donnell moved to have a consent agenda consisting of: Special Ordinance 2004-1046, approving a Franchise Agreement for cable services with Consolidated Communications Network Services, Inc.; Special Ordinance 2004-1047, establishing wage rates for custodian positions; Special Ordinance 2004-1048, authorizing a budget revision in the approximate amount of \$42,678 and providing incentive awards for certain management and supervisory employees to reward them for their role in reducing expenditures sufficient to achieve an increase in the unreserved fund balance of the General Fund as disclosed in the audit for the fiscal year ended April 30, 2004; Special Ordinance 2004-1049, approving a final plat of Phase I of Brookstone Subdivision in the vicinity of South 9<sup>th</sup> Street; Resolution 2004-2564, authorizing participation in the Coles County Hazards Mitigation Planning Program; Ordinance 2004-5194, amending Sections §35.15 - §35.17 of the Mattoon Code of Ordinances to prescribe procurement procedures; Council Decision Request 2004-374, authorizing interfund transfers of \$415,541 of personal property replacement taxes received in the Personal Property Tax Replacement Fund and General Fund in prior fiscal years that are due to the Police Pension Fund, Firefighters Pension Fund and Library Fund as disclosed in the audit for the fiscal year ended April 30, 2004; Council Decision Request 2004-375, authorizing an interfund transfer of \$11,379.63 due from the Motor Fuel Tax Fund to the General Fund as disclosed in the audit for the fiscal year ended April 30, 2004; Council Decision Request 2004-376, authorizing an interfund transfer of \$1,379.55 due from the Revolving Loan Fund to the General Fund as disclosed in the audit for the fiscal year ended April 30, 2004; Council Decision Request 2004-377, authorizing Speer Financial and Bond Counsel Kurt Froehlich to proceed with procedures necessary for a refunding of the City's 1998 (Sewer) and 1999 (Police Facility) General Obligation Bonds by negotiated sale, structuring the savings in interest expense over the life of the refunding bond issue to retain relatively level annual debt service payments; Council Decision Request 2004-378, ratifying the appointment of Robert Shamdin and the re-appointment of Bernie DeBuhr and Ken Gagnon to the Revolving Loan Advisory Committee for terms expiring April 30, 2006; Council Decision Request 2004-379, approving the appointment of Samuel D. Gaines to regular employment status on successful completion of his probationary period retroactive to November 1, 2004; and Council Decision Request 2004-380, approving an adjustment excess of \$1,000 for a water service leak at Palm Terrace Nursing Home.

Mayor Carter declared the motion carried by the following vote: YEA Commissioner Donnell, YEA Commissioner Gambill, YEA Commissioner Hesse, YEA Commissioner Schilling, YEA Mayor Carter.

Mayor Carter seconded by Commissioner Donnell moved to approve a consent agenda consisting of: Special Ordinance 2004-1046, approving a Franchise Agreement for cable services with Consolidated Communications Network Services, Inc.; Special Ordinance 2004-1047, establishing wage rates for custodian positions; Special Ordinance 2004-1048, authorizing a budget revision in the approximate amount of \$42,678 and providing incentive awards for certain management and supervisory employees to reward them for their role in reducing expenditures sufficient to achieve an increase in the unreserved fund balance of the General Fund as disclosed in the audit for the fiscal year ended April 30, 2004; Special Ordinance 2004-1049, approving a final plat of Phase I of Brookstone Subdivision in the vicinity of South 9<sup>th</sup> Street; Resolution 2004-2564, authorizing participation in the Coles County Hazards Mitigation Planning Program; Ordinance 2004-5194, amending Sections §35.15 - §35.17 of the Mattoon Code of Ordinances to prescribe procurement procedures; Council Decision Request 2004-374, authorizing interfund transfers of \$415,541 of personal property replacement taxes received in the Personal Property Tax Replacement Fund and General Fund in prior fiscal years that are due to the Police Pension Fund, Firefighters Pension Fund and Library Fund as disclosed in the audit for the fiscal year ended April 30, 2004; Council Decision Request 2004-375, authorizing an interfund transfer of \$11,379.63 due from the Motor Fuel Tax Fund to the General Fund as disclosed in the audit for the fiscal year ended April 30, 2004; Council Decision Request 2004-376, authorizing an interfund transfer of \$1,379.55 due from the Revolving Loan Fund to the General Fund as disclosed in the audit for the fiscal year ended April 30, 2004; Council Decision Request 2004-377, authorizing Speer Financial and Bond Counsel Kurt Froehlich to proceed with procedures necessary for a refunding of the City's 1998 (Sewer) and 1999 (Police Facility) General Obligation Bonds by negotiated sale, structuring the savings in interest expense over the life of the refunding bond issue to retain relatively level annual debt service payments; Council Decision Request 2004-378, ratifying the appointment of Robert Shamdin and the re-appointment of Bernie DeBuhr and Ken Gagnon to the Revolving Loan Advisory Committee for terms expiring April 30, 2006; Council Decision Request 2004-379, approving the appointment of Samuel D. Gaines to regular employment status on successful completion of his probationary period retroactive to November 1, 2004; and Council Decision Request 2004-380, approving an adjustment excess of \$1,000 for a water service leak at Palm Terrace Nursing Home.

CITY OF MATTOON, ILLINOIS

***SPECIAL ORDINANCE 2004-1046***

**AN ORDINANCE APPROVING A FRANCHISE AGREEMENT FOR CABLE SERVICES WITH  
CONSOLIDATED COMMUNICATIONS NETWORK SERVICES**

**WHEREAS**, Consolidated Communication Network Services, Inc, has applied for a franchise for operating a community cable system to provide cable services within the City of Mattoon ("the City"); and

**WHEREAS**, the City may license, franchise and tax the business of operating community cable services and grant cable operators the right and permission to use public streets and rights of way and other public grounds pursuant to state enabling statutory authority provided in 65 ILCS 5/11-42-11; and

**WHEREAS**, MCC Illinois LLC, a limited liability corporation duly organized and validly existing under laws of the State of Delaware, legally holds a cable television franchise within the City that was originally granted to TCI-Cable of Mattoon on February 18, 1986 and extended until April 18, 2017 by Ordinance 2002-5120 adopted June 4, 2002; and

**WHEREAS**, a municipality may grant licensing to more than one cable operator pursuant to state enabling statutory authority provided in 65 ILCS 5/11-42-11(e) on terms no more favorable nor less burdensome to the applicant than those terms required under the existing cable franchise; and

**WHEREAS**, written notice was given to MCC Illinois LLC that a public hearing would be held on November 2, 2004 beginning at 7 PM in the Council Chambers of Mattoon City Hall to consider and determine whether an additional cable franchise will be granted to Consolidated Communication Network Services, Inc. to serve all of the territorial area presently served by MCC Illinois LLC; and

**WHEREAS**, said public hearing was conducted on the date, time and place aforesaid to determine the public need for an additional cable franchise, the capacity of public rights of way to accommodate additional cable services, the potential disruption to existing users of public rights of way to complete construction and provide services within the area, the long term economic impact of an additional cable system and other factors deemed appropriate by the municipality; and

**WHEREAS**, the time is now appropriate for the City Council to determine, based upon the foregoing factors, whether it is in the best interest of the municipality to grant the additional cable franchise.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL FOR THE CITY OF MATTOON, COLES COUNTY, ILLINOIS**, as follows:

**Section 1.** The facts and statements contained in the preamble to this Ordinance are found to be true and correct and are hereby adopted as part of this Ordinance.

**Section 2.** The City Council hereby determines that it is in the best interest of the municipality to grant an additional community cable system franchise.

**Section 3.** The mayor is authorized to sign a Franchise Agreement with Consolidated Communication Network Services, Inc., a copy of which is attached and incorporated herein by reference.

**Section 4.** This ordinance shall be deemed published as of the day of its adoption and approval by the City Council.

**Section 5.** This ordinance shall be effective upon its approval as provided by law.

Upon motion by Mayor Carter seconded by Commissioner Donnell, adopted this 2nd day of November, 2004, by a roll call vote, as follows:

AYES (Names): Commissioner Donnell, Commissioner Gambill,  
Commissioner Hesse, Commissioner Schilling,  
Mayor Carter

NAYS (Names): None

ABSENT (Names): None

Approved this 2nd day of November, 2004.

/s/ David E. Carter

David E. Carter, Mayor

City of Mattoon, Coles County, Illinois

ATTEST:

APPROVED AS TO FORM

/s/ Susan J. O'Brien

/s/ J. Preston Owen

Susan J. O'Brien, City Clerk

J. Preston Owen, City Attorney

Recorded in the Municipality's Records on November 4th, 2004.

### ***FRANCHISE AGREEMENT***

This Franchise Agreement ("Franchise") is between the City of Mattoon, Illinois, hereinafter referred to as "the Franchising Authority" and Consolidated Communication Network Services, Inc., a corporation duly organized and validly existing under the laws of the State of Illinois, hereinafter referred to as "the Grantee."

The Franchising Authority hereby acknowledges that the Grantee has the financial, legal, and technical ability reasonably sufficient to provide services, facilities, and equipment necessary to meet the future cable-related needs of the community, and having afforded the public adequate notice and opportunity for comment, desires to enter into this Franchise with the Grantee for the construction and operation of a cable system on the terms set forth herein.

## SECTION 1

### Definition of Terms

1.1 **Terms.** For the purpose of this Franchise, the following terms, phrases, words, and abbreviations shall have the meanings ascribed to them below. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number:

- A. “Basic Cable” is the lowest priced tier of Cable Service that includes the retransmission of local broadcast television signals.
- B. “Cable Act” means Title VI of the Communications Act of 1934, as amended.
- C. “Cable Services” shall mean (1) the one-way transmission to Subscribers of (a) video programming, or (b) other programming service, and (2) Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.
- D. “Cable System” shall mean the Grantee’s facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Video Service which includes video programming and which is provided to multiple Subscribers within the Service Area.
- E. “FCC” means Federal Communications Commission, or successor governmental entity thereto.
- F. “Franchising Authority” means the City of Mattoon, Illinois.
- G. “Grantee” means Consolidated Communications Network Services, Inc., a corporation, or the lawful successor, transferee, or assignee thereof.
- H. “Gross Revenue” means subscriber and non-subscriber revenues received by the Grantee from the operation of the Cable System. Subscriber revenues include revenues from basic cable service and optional premium, pay per-channel or pay-per-program service; customer equipment and installation charges, disconnection and reconnection charges. Non-subscriber revenues include advertising sales less agency fees, home shopping receipts, revenues from equipment rental and associated personnel fees. Gross revenues shall NOT include revenues from cable modem service, deposits, refunds, credits, bad debt, the FCC User Fee, Franchise Fees and any tax, fee or assessment of general applicability collected by the Grantee from Subscribers for pass-through to a government agency.
- I. “Person” means an individual, partnership, association, joint stock company, trust, corporation, or governmental entity.
- J. “Public Way” shall mean grounds owned by the Franchise Authority, the surface of, and the space above and below, any public street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, parkway, way, lane, public way, drive, circle, or other public right-of-way, including, but not limited to, public utility easements, dedicated utility strips, or rights-of-way dedicated for compatible uses now or hereafter held by the Franchising Authority in the Service Area which shall entitle the Grantee to the use thereof for the purpose of installing, operating, repairing, and maintaining the Cable System.
- K. “Service Area” means the present boundaries of the Franchising Authority, and shall include any additions thereto by annexation or other legal means, subject to the exceptions in subsection 3.9.
- L. “Standard Installation” is defined as 125 feet from the nearest telephone serving terminal to the Subscriber’s terminal.
- M. “Subscriber” means a Person who lawfully receives Cable Service of the Cable System with the Grantee’s express permission.

## SECTION 2

### *Grant of Franchise*

**2.1 Grant.** The Franchising Authority hereby grants to the Grantee a nonexclusive Franchise which authorizes the Grantee to construct and operate a Cable System in, along, among, upon, across, above, over, under, or in any manner connected with Public Ways within the Service Area, and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain, or retain in, on, over, under, upon, across, or along any Public Way such facilities and equipment as may be necessary or appurtenant to the Cable System for the transmission and distribution of Cable Services, data services, information and other communications services or for any other lawful purposes.

**2.2 Other Ordinances.** The Grantee agrees to comply with the terms of any lawfully adopted generally applicable local ordinance, to the extent that the provisions of the ordinance do not have the effect of limiting the benefits or expanding the obligations of the Grantee that are granted by this Franchise. Neither party may unilaterally alter the material rights and obligations set forth in this Franchise. In the event of a conflict between any ordinance and this Franchise, the Franchise shall control.

**2.3 Favored Nations.** The Franchising Authority shall not authorize or permit any Person providing video programming services and/or Cable Services to enter into the Franchising Authority's Public Ways in any part of the Service Area on terms or conditions more favorable or less burdensome to such Person than those applied to the Grantee pursuant to this Franchise. A Franchising Authority may require insurance or surety in excess of that required under this Franchise in recognition of such operator being either a new entrant or because of the construction requirements specified in that operator's agreement with the Franchising Authority.

**2.4 Term.** The Franchise granted hereunder shall commence on the effective date of the Franchise as set forth in subsection 10.6. It shall terminate April 18, 2017, unless otherwise lawfully terminated in accordance with the terms of this Franchise.

### **SECTION 3**

#### **Standards of Service**

**3.1 Conditions of Occupancy.** The Cable System installed by the Grantee pursuant to the terms hereof shall be located so as to cause a minimum of interference with the proper use of Public Ways and with the rights and reasonable convenience of property owners who own property that adjoins any of such Public Ways.

**3.2 Restoration of Public Ways.** If during the course of the Grantee's construction, operation, or maintenance of the Cable System there occurs a disturbance of any Public Way by the Grantee, Grantee shall replace and restore such Public Way to a condition reasonably comparable to the condition of the Public Way existing immediately prior to such disturbance.

**3.3 Relocation for the Franchising Authority.** Upon its receipt of reasonable advance written notice, to be not less than ten (10) business days, the Grantee shall protect, support, raise, lower, temporarily disconnect, relocate in or remove from the Public Way, any property of the Grantee when lawfully required by the Franchising Authority by reason of traffic conditions, public safety, street abandonment, freeway and street construction, change or establishment of street grade, installation of sewers, drains, gas or water pipes, or any other type of public structures or improvements which are not used to compete with the Grantee's services. The Grantee shall in all cases have the right of abandonment of its property.

**3.4 Relocation for a Third Party.** The Grantee shall, on the request of any Person holding a lawful permit issued by the Franchising Authority, protect, support, raise, lower, temporarily disconnect, relocate in or remove from the Public Way as necessary any property of the Grantee, provided: (A) the expense of such is paid by said Person benefiting from the relocation, including, if required by the Grantee, making such payment in advance; and (B) the Grantee is given reasonable advance written notice to prepare for such changes. For purposes of this subsection, "reasonable advance written notice" shall be no less than thirty (30) business days in the event of a temporary relocation, and no less than ninety (90) days for a permanent relocation.

**3.5 Trimming of Trees and Shrubbery.** The Grantee shall have the authority to trim trees or other nature growth in order to access and maintain the Cable System.

**3.6 Safety Requirements.** Construction, operation, and maintenance of the Cable System shall be performed in an orderly and workmanlike manner. All such work shall be performed in substantial accordance with generally applicable federal, state, and local regulations and the National Electric Safety Code.

**3.7 Underground Construction.** In those areas of the Service Area where all of the transmission or distribution facilities of the respective public utilities providing telephone communications and electric services are underground, the Grantee likewise shall construct, operate, and maintain its Cable System underground. Nothing contained in this subsection shall require the Grantee to construct, operate, and maintain underground any ground-mounted appurtenances.

**3.8 Access to Open Trenches.** The Franchising Authority agrees to include the Grantee in the platting process for any new subdivision. At a minimum, the Franchising Authority agrees to require as a condition of issuing a permit for open trenching to any utility or developer that (A) the utility or developer give the Grantee at least ten (10) days advance written notice of the availability of the open trench, and (B) that the utility or developer provide the Grantee with reasonable access to the open trench. Notwithstanding the foregoing, the Grantee shall not be required to utilize any open trench.

**3.9 Required Extensions of the Cable System.** Grantee agrees to provide Cable Service to all residences in the Service Area that meet the following criteria. If a Grantee receives a request for Cable service from a potential Subscriber in an area unserved by Grantee which is directly adjacent to Grantee's existing distribution facilities and there are at least five (5) residences within one-quarter mile from the

Grantee's Cable System within such unserved area, Grantee shall extend its Cable System to such Subscribers at no cost to other than the normal Installation fees. The Grantee shall have the right, but will not be obligated, to extend the Cable System into any portion of the Service Area where another operator is providing Cable Service, into any annexed area which is not adjacent to the present Service Area as described above, or into any area which is financially or technically infeasible due to extraordinary circumstances, such as a runway or freeway crossing.

### **3.10 Subscriber Charges for Extensions of the Cable System.**

A. No Subscriber shall be refused service arbitrarily. However, if an area does not meet the density requirements of subsection 3.9 above, the Grantee shall only be required to extend the Cable System to Subscriber(s) in that area if the Subscriber(s) are willing to share the capital costs of extending the Cable System. Specifically, the Grantee shall contribute a capital amount equal to the construction cost per mile, multiplied by a fraction whose numerator equals the actual number of residences per 1320 cable-bearing strand feet from the Grantee's trunk or distribution cable, and whose denominator equals five (5). Subscribers who request service hereunder shall bear the remaining cost to extend the Cable System on a *pro rate* basis. For purposes of this Section 3.10 such Subscriber(s) shall be referred to as "Original Subscriber(s)". The Grantee may require that payment of the capital contribution in aid of construction borne by such potential Subscribers be paid in advance. Subscribers shall also be responsible for any Standard/non-Standard Installation charges to extend the Cable System from the tap to the residence.

B. In the event that within the first sixty (60) months subsequent to the cost contributions made by the Original Subscriber(s) described above, such area reaches the density requirements for service specified in Section 3.9, then the Original Subscriber(s) shall receive reimbursement from Grantee of such cost contribution as follows:

- 90% if within 12 months
- 80% if within 24 months
- 70% if within 36 months
- 60% if within 48 months
- 50% if within 60 months

C. Commercial and Industrial Areas: The Grantee will extend the Cable System and make service available to commercial and industrial areas within the Service Area written Grantee's discretion based upon the technical and economic feasibility of any such extension.

**3.11 Cable Service to Public Buildings.** The Grantee, shall continue to provide without charge, a Standard Installation and one outlet of Basic Cable to those administrative buildings owned and occupied by the Franchising Authority, fire station(s), police station(s), and K-12 public school(s) that are passed by its Cable System. The Cable Service provided shall not be distributed beyond the originally installed outlet without authorization from the Grantee. The Cable Service provided shall not be used for commercial purposes, and such outlets shall not be located in areas open to the public. The Franchising Authority shall take reasonable precautions to prevent any inappropriate use of the Grantee's Cable System or any loss or damage to Grantee's Cable System. The Franchising Authority shall hold the Grantee harmless from any and all liability or claims arising out of the provision and use of Cable Service required by this subsection. The Grantee shall not be required to provide an outlet to such buildings where a non-Standard Installation is required, unless the Franchising Authority or building owner/occupant agrees to pay the incremental cost of any necessary Cable System extension and/or non-Standard Installation. If additional outlets of Basic Cable are provided to such buildings, the building owner/occupant shall pay the usual installation and service fees associated therewith.

**3.12 Emergency Use.** The Emergency Alert System ("EAS") EAS shall be operated in accordance with FCC regulations. The Franchising Authority shall permit only appropriately trained and authorized Persons to operate the EAS equipment and shall take reasonable precautions to prevent any use of the Grantee's Cable System in any manner that results in inappropriate use thereof, or any loss or damage to the Cable System. Except to the extent expressly prohibited by law, the Franchising Authority shall hold the Grantee, its employees, officers and assigns harmless from any claims arising out of use of the EAS, including, but not limited to, reasonable attorneys' fees and costs.

**3.13 System Build.** The Grantee agrees that in consideration of the Franchising Authority, no later than thirty-six (36) months from the Effective Date of this Agreement, Grantee will build-out its Cable System to requirements in section 3.9 and 3.10 above. The Cable System will have capabilities to provide a minimum of one hundred (100) channels providing a diverse selection of programming options and will insure that the system will be flexible and adaptable to future technological development. The Grantee may modify the design of the system and its use of transmission technology as the build progresses. In the event of any delay in obtaining permits, approvals or licenses to perform required make ready work ("Permits") resulting from the failure or delay by the Franchising Authority or, any other regulatory authority, railroad, common carrier, electric utility, telecommunications carrier or local exchange carrier, to issue such permits upon a timely basis, Grantee's performance of the build will be modified as necessary.

**3.14 Technical Standards.** The Cable System will be operated throughout the Term of the Franchise in accordance with the technical standards established by the Federal Communications Commission.

**3.15 Stand-By Power.** Subsequent to completion of the upgrade Grantee shall provide stand-by power at the headend facility. Such stand-by power shall become activated automatically upon the failure of normal power supply.

**3.16 Parental Lock Out.** In order to restrict the viewing of programming in accordance with section 6.24 of the Cable Act, upon the request of a subscriber, a cable operator shall provide (by sale or lease) a device by which the subscriber can prohibit viewing of a particular cable service during periods selected by that subscriber.

**3.17 Customer Service Standards.** Grantee will comply with the customer service standards promulgated by the FCC in accordance with Section 632 of the Cable Act throughout the Term of this Franchise for as long as such standards are in effect. Such standards are attached hereto as Exhibit 3.18.

**3.18 Government Access Channel.** Upon completion of the system build described herein the Grantee will provide the Franchising Authority with a channel dedicated throughout the Term of this Agreement for government access use. Grantee will further provide any necessary headend equipment to activate the Government Access Channel and a Keyboard system (Character Generator) for on-screen provision of public information.

## **SECTION 4**

### **Programming**

**4.1 Broad Categories of Service to be Provided.** The Franchise Authority acknowledges that programming on Community Cable Systems has generally been deregulated by federal law. However, Grantee shall provide on the Cable System all Over-the-Air broadcast stations required to be carried by federal law or FCC regulations. Grantee shall provide a wide range and diversity of programming for Subscribers residing within the Service Area. Categories of programming comparable in quality, mix, and level to be provided by Grantee to Subscribers shall include, but not limited to the following:

- A. Local, regional, national and international news programs
- B. Local, regional, national sports and sporting events
- C. Local, regional, and national weather
- D. A Government Access Channel when and if requested by the Franchise Authority for the exclusive use of and programming by the Franchise Authority
- E. Religious programming
- F. Music programming
- G. Educational programming
- H. Public affairs and public service programming
- I. Movies
- J. General entertainment programming
- K. Cultural and literary-related programming
- L. Children's programming
- M. Business-related programming
- N. To the extent not preempted by federal law, Over the Air Broadcast stations

**4.2 Obscene Programming.** Grantee shall comply with all federal laws and regulations concerning the cablecasting of obscene programming.

## **SECTION 5**

### **Regulation by the Franchising Authority**

#### **5.1 Franchise Fee.**

A. As rent for use of Public Ways within the municipality, the Grantee shall pay to the Franchising Authority a franchise fee of five percent (5%) of annual Gross Revenues (as defined in subsection 1.1 of this Franchise). In accordance with the Cable Act, the twelve (12) month period applicable under the Franchise for the computation of the franchise fee shall be a calendar year. The franchise fee payment shall be due annually and payable within 90 days after the close of the preceding calendar year. Each payment shall be accompanied by a brief report prepared by a representative of the Grantee showing the basis for the computation.

B. Limitation on Franchise Fee Actions. The period of limitation for recovery by the Franchising Authority of any franchise fee payable hereunder shall be three (3) years from the date on which payment by the Grantee is due to the Franchising Authority.

**5.2 Rates and Charges.** The Franchising Authority acknowledges that it may NOT regulate rates and charges that have been deregulated by federal law.

### **5.3 Renewal of Franchise.**

- A. The Franchising Authority and the Grantee agree that any proceedings undertaken by the Franchising Authority that relate to the renewal of the Grantee's Franchise shall be governed by and comply with the renewal provisions of federal law.
- B. In addition to the procedure set forth in the Cable Act, the Franchising Authority agrees to notify the Grantee of all of its assessments regarding the identity of future cable-related community needs and interests, as well as the past performance of the Grantee under the then current Franchise term. The Franchising Authority further agrees that such assessments shall be provided to the Grantee promptly so that the Grantee has adequate time to submit a proposal pursuant to the Cable Act and complete renewal of the Franchise prior to expiration of its term.
- C. Notwithstanding anything to the contrary set forth in this subsection 5.3, the Grantee and the Franchising Authority agree that at any time during the term of the then current Franchise while affording the public appropriate notice and opportunity to comment in accordance with the provisions of federal law the Franchising Authority and the Grantee may agree to undertake and finalize informal negotiations regarding renewal of the then current Franchise and the Franchising Authority may grant a renewal thereof.
- D. The grantee and the Franchising Authority consider the terms set forth in this subsection 5.3 to be consistent with the express renewal provisions of the Cable Act.

**5.4 Conditions of Sale.** If a renewal or extension of the Grantee's Franchise is denied or the Franchise is lawfully terminated, and the Franchising Authority either lawfully acquires ownership of the Cable System or by its actions lawfully effects a transfer of ownership of the Cable System to another party, any such acquisition or transfer shall be at the price determined pursuant to the provisions set forth in Section 627 of the Cable Act.

The Grantee and the Franchising authority agree that in the case of a final determination of a lawful revocation of the Franchise, the Grantee shall be given at least twelve (12) months to effectuate a transfer of its Cable System to a qualified third party. Furthermore, the Grantee shall be authorized to continue to operate pursuant to the terms of its prior Franchise during this period. If, at the end of that time, the Grantee is unsuccessful in procuring a qualified transferee or assignee of its Cable System which is reasonably acceptable to the Franchising Authority, the Grantee and the Franchising Authority may avail themselves of any rights they may have pursuant to federal or state law. It is further agreed that the Grantee's continued operation of the Cable System during the twelve (12) month period shall not be deemed to be a waiver, nor an extinguishment of, any rights of either the Franchising authority or the Grantee.

**5.5 Transfer of Franchise.** The Grantee's right, title, or interest in the Franchise shall not be sold, transferred, assigned, or otherwise encumbered, other than to an entity controlling, controlled by, or under common control with the Grantee, without prior written notice to the Franchising Authority. No such notice shall be required, however, for a transfer in trust, by mortgage, by other hypothecation, or by assignment of any rights, title, or interest of the Grantee in the Franchise or Cable System in order to secure indebtedness.

## ***SECTION 6***

### **Books and Records**

The Grantee agrees that the Franchising Authority, upon thirty (30) days written notice to the Grantee and no more than once annually may review such of its books and records at the Grantee's business office, during normal business hours and on a nondisruptive basis, as is reasonably necessary to ensure compliance with the terms of this Franchise. Such notice shall specifically reference the subsection of the Franchise which is under review, so that the Grantee may organize the necessary books and records for easy access by the Franchising Authority. Alternatively, if the books and records are not easily accessible at the local office of the Grantee, the Grantee may, at its sole option, choose to pay the reasonable travel costs of the Franchising Authority's representative to view the books and records at the appropriate location. The Grantee shall not be required to maintain any books and records for Franchise compliance purposes longer than three (3) years. Notwithstanding anything to the contrary set forth herein, the Grantee shall not be required to disclose information which it reasonably deems to be proprietary or confidential in nature, nor disclose books and records of any affiliate which is not providing Cable Service in the Service Area. The Franchising Authority agrees to treat any information disclosed by the Grantee as confidential and only to disclose it to employees, representatives, and agents thereof that have a need to know, or in order to enforce the provisions hereof. The Grantee shall not be required to provide Subscriber information in violation of Section 631 of the Cable Act.

## ***SECTION 7***

### **Insurance and Indemnification**

**7.1 Insurance Requirements.** The Grantee shall maintain in full force and effect, at its own cost and expense, during the term of the Franchise, Commercial General Liability Insurance in the amount of \$2,000,000 combined single limit for bodily injury and property damage. The Franchising Authority shall be designated as an additional insured. Such insurance shall be noncancellable except upon thirty (30) days prior written notice to the Franchising Authority. Upon written request, the Grantee shall provide a Certificate of Insurance

showing evidence of the coverage required by this subsection.

**7.2 Indemnification.** The Grantee agrees to indemnify, save and hold harmless, and defend the Franchising Authority, its officers, boards and employees, from and against any liability for damages and for any liability or claims resulting from property damage or bodily injury (including accidental death), which arise out of the Grantee's construction, operation, or maintenance of its Cable System in the Service Area provided that the Franchising authority shall give the Grantee written notice of its obligation to indemnify the Franchising Authority with ten (10) days of receipt of a claim or action pursuant to this subsection. Notwithstanding the foregoing, the Grantee shall not indemnify the Franchising Authority for any damages, liability or claims resulting from the willful misconduct or negligence of the Franchising Authority.

## **SECTION 8**

### **Evaluation of Grantee's Performance**

**8.1 Schedule for Evaluation.** The Franchising Authority shall evaluate performance of the Grantee for purposes of determining compliance with the Franchise. At the request of the Franchising Authority, the Franchising Authority and the Grantee shall hold performance evaluation sessions within ninety (90) days of the third, fifth and seventh anniversary dates of the Grantee's award of the Franchise. Evaluation meetings shall be open to the public. The Franchising Authority shall be responsible for notifying the Grantee, in writing, at least sixty (60) days in advance, of a specified performance evaluation sessions. The Franchising Authority may hold special evaluation sessions at any time during the term of the Franchise at the request of the Franchising Authority or the Grantee.

**8.2 Information Required of Grantee for Evaluation.** Upon request by the Franchising Authority during the evaluation of Grantee's performance, Grantee shall cooperate fully with the Franchising Authority and provide such documents, records, schedules, logs, reports, memoranda, ledgers, and other information which the Franchising Authority may request in order that a reasonable review of the Grantee's compliance with the Franchise can be performed.

**8.3 Topics for Discussion during the Evaluation Process.** Topics which may be discussed during the evaluation process or at evaluation sessions shall include any aspect of Grantee's compliance with the Franchise Agreement including by not limited to: Franchise Fees, penalties, customer service, system performance, extensions of Cable system, the Cable System upgrade and insurance requirements. The Franchising Authority shall provide Grantee with a listing of topics for discussion sixty (60) days prior to the date of a scheduled evaluation session.

**8.4 Public Notice.** Franchise evaluation sessions and meetings shall be conducted in accordance with the Illinois Open Meeting Act.

**8.5 Franchise Evaluation – Cable System Testing.** In the event that the evaluation of the Grantee's performance under the Franchise reveals evidence-indicating non-compliance with the Franchise, the Franchising Authority may invoke the enforcement provisions set forth in this Franchise.

**8.6 Costs Related to Franchise Performance Evaluation.** The costs of conducting Franchise Performance Evaluation sessions shall be the responsibility of the party that incurs the costs. Such costs may include, but not limited to, staff time and resources, reasonable fees for professional cable television consultants, engineering personnel, accountants, and legal assistance.

## **SECTION 9**

### **Enforcement and Termination of Franchise**

**9.1 Notice of Violation.** In the event that the Franchising Authority believes that the Grantee has not complied with the terms of the Franchise, the Franchising Authority shall informally discuss the matter with Grantee. If these discussions do not lead to resolution of the problem, the Franchising Authority shall notify the Grantee in writing of the exact nature of the alleged noncompliance.

**9.2 The Grantee's Right to Cure or Respond.** The Grantee shall have thirty (30) days from receipt of the notice described in subsection 8.1: (A) to respond to the Franchising Authority, contesting the assertion of noncompliance, or (B) to cure such default, or (C) in the event that, by the nature of default, such default cannot be cured within the thirty (30) day period, initiate reasonable steps to remedy such default and notify the Franchising Authority of the steps being taken and the projected date that they will be completed.

**9.3 Public Hearing.** In the event that the Grantee fails to respond to the notice described in subsection 8.1 pursuant to the procedures set forth in subsection 8.1, or in the event that the alleged default is not remedied within thirty (30) days or the date projected pursuant to 8.2 above, if it intends to continue its investigation into the default, then the Franchising Authority shall schedule a public hearing. The Franchising Authority shall provide the Grantee at least ten (10) days prior written notice of such hearing, which specified the time, place and purpose of such hearing, and provide the Grantee the opportunity to be heard.

**9.4 Enforcement.** Subject to applicable federal and state law, in the event the Franchising authority, after the hearing set forth in subsection 9.3, determines that the Grantee is in default of any provision of the Franchise, the Franchising Authority may:

- A. See specific performance of any provision, which reasonably lends itself to such remedy, as an alternative to damages; or
- B. Commence an action at law for monetary damages or seek other equitable relief; or
- C. In the case of a substantial default of a material provision of the Franchise, seek to revoke the Franchise in accordance with subsection 9.5.

**9.5     Revocation.** Should the Franchising Authority seek to revoke the Franchise after following the procedures set forth in subsections 9.1 – 9.4 above, the Franchising Authority shall give written notice to the Grantee of its intent. The notice shall set forth the exact nature of the noncompliance. The Grantee shall have ninety (90) days from such notice to object in writing and to state its reasons for such objection. In the event the Franchising Authority has not received a satisfactory response from the grantee it may then seek termination of the Franchise at a public hearing. The Franchising Authority shall cause to be served upon the Grantee, at least thirty (30) days prior to such public hearing, a written note specifying the time and place of such hearing and stating its intent to revoke the Franchise.

At the designated hearing, Grantee shall be provided a fair opportunity for full participation, including the right to be represented by legal counsel, to introduce relevant evidence, to require the production of evidence, to compel the relevant testimony of the officials, agents, employees, or consultants of the Franchising authority, to compel the testimony of other persons as permitted by law, and to question witnesses. A complete verbatim record and transcript shall be made of such hearing.

Following the hearing, the Franchising Authority shall determine whether or not the Franchise shall be revoked. If the Franchising Authority determines that the Franchise shall be revoked, the Franchising Authority shall promptly provide Grantee with its decision in writing. The Grantee may appeal such determination of the Franchising Authority to an appropriate court which shall have the power to review the decision of the Franchising Authority *de novo*. Grantee shall be entitled to such relief, as the court finds appropriate. Such appeal must be taken within sixty (60) days of Grantee's receipt of the determination of the Franchising Authority.

The Franchising Authority may, at its sole discretion, take any lawful action which it deems appropriate to enforce the Franchising Authority's rights under the Franchise in lieu of revocation of the Franchise.

**9.6     Force Majeure.** The Grantee shall not be held in default under, or in noncompliance with, the provisions of the Franchise, nor suffer any enforcement or penalty relating to noncompliance or default, where such noncompliance or alleged defaults occurred or were caused by circumstances reasonably beyond the ability of the Grantee to anticipate and control. This provision includes work delays caused by waiting for utility providers to service or monitor their utility poles to which the Grantee's Cable System is attached, as well as unavailability of materials and/or qualified labor to perform the work necessary.

Furthermore, the parties hereby agree that it is not the Franchising Authority's intention to subject the Grantee to penalties, fines, forfeitures or revocation of the Franchise for violations of the Franchise where the violation was a good faith error that resulted in no or minimal negative impact on the Subscribers within the Service Area, or where strict performance would result in practical difficulties and hardship to the Grantee which outweigh the benefit to be derived by the Franchising Authority and/or Subscribers.

## **SECTION 10**

### **Miscellaneous Provisions**

**10.1     Actions of Parties.** In any action by the Franchising Authority or the Grantee that is mandated or permitted under the terms hereof, such party shall act in a reasonable, expeditious, and timely manner. Furthermore, in any instance where approval or consent is required under the terms hereof, such approval or consent shall not be unreasonably withheld.

**10.2     Entire Agreement.** This Franchise constitutes the entire agreement between the Grantee and the Franchising Authority and supersedes all other prior understandings and agreements oral or written. Any amendments to this Franchise shall be mutually agreed to in writing by the parties.

**10.3     Notice.** Unless expressly otherwise agreed between the parties, every notice or response required by this Franchise to be served upon the Franchising Authority or the Grantee shall be in writing, and shall be deemed to have been duly given to the required party when placed in a properly sealed and correctly addressed envelope: a) upon receipt when hand delivered with receipt/acknowledgement, b) upon receipt when sent certified, registered mail, c) within five (5) business days after having been posted in the regular mail or d) the next business day if sent by express mail or overnight air courier.

The notices or responses to the Franchising Authority shall be addressed as follows:

City of Mattoon  
208 North 19<sup>th</sup> St

Mattoon, IL 61938  
Attn: City Clerk

The notices or responses to the Grantee shall be addressed as follows:

Consolidated Communications Network Service, Inc.  
121 South 17<sup>th</sup> Street  
Mattoon, IL. 61938  
Attn: Video Product Manager

The Franchising Authority and the Grantee may designate such other address or addresses from time to time by giving notice to the other in the manner provided for in this subsection.

**10.4 Descriptive Headings.** The captions to Sections and subsections contained herein are intended solely to facilitate the reading thereof. Such captions shall not affect the meaning or interpretation of the text herein.

**10.5 Severability.** If any Section, subsection, sentence, paragraph, term, or provision hereof is determined to be illegal, invalid, or unconstitutional, by any court of competent jurisdiction or by any state or federal regulatory authority having jurisdiction thereof, such determination shall have no effect on the validity of any other Section, subsection, sentence, paragraph, term or provision hereof, all of which will remain in full force and effect for the term of the Franchise.

**10.6 Effective Date.** The effective date of this Franchise is November 1, 2004, pursuant to the provisions of applicable law. This Franchise shall expire on April 18, 2017, unless extended by the mutual agreement of the parties.

Approved this 2<sup>nd</sup> day of November, 2004.

/s/David E. Carter

David E. Carter, Mayor

City of Mattoon, Coles County, Illinois

ATTEST:

APPROVED AS TO FORM

/s/ Susan J. O'Brien

/s/ J. Preston Owen

Susan J. O'Brien, City Clerk

J. Preston Owen, City Attorney

Accepted this 2nd day of November, 2004, subject to applicable federal, state and local law.

Consolidated Communications Network Services, Inc.

Signature:\_\_\_\_\_

Name/Title:\_\_\_\_\_

Mayor Carter declared the motion carried by omnibus vote.

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## CITY OF MATTOON, ILLINOIS

### SPECIAL ORDINANCE NO. 2004-1047

#### AN ORDINANCE ESTABLISHING WAGE RATES FOR CUSTODIAN POSITIONS

**WHEREAS**, Special Ordinance 2004-1031, which established the 2004/2005 compensation plan for employees of the municipality, established just one \$14.18 hourly wage rate for custodian positions; and

**WHEREAS**, the City Council desires to establish wage rates for custodian positions that will be equivalent to wage rates established for positions represented by a collective bargaining agreement.

**NOW, THEREFORE, BE IT ORDAINED** by the City Council of the City of Mattoon as follows:

**Section 1.** Wage rates for custodian positions from the effective date of this ordinance to April 30, 2005 are hereby fixed as follows:

<b>Job Title</b>	<b>Hourly Wage Rate</b>
Custodian I	\$8.29 to \$9.12
Custodian II	\$9.71
Custodian III	\$11.43
Custodian IV	\$14.18

**Section 2.** New employees appointed to custodian positions will generally be hired at the Custodian I entry-level pay grade, unless exceptional qualifications and experience are demonstrated. A 10% increase will be authorized to employees appointed to the entry level pay grade upon successful completion of a 6-month probationary period.

**Section 3.** A job description for the Custodian I position that will be assigned to duties in the Police Department, attached hereto as an exhibit to this ordinance, is hereby approved.

**Section 4.** This ordinance shall be deemed published as of the day of its adoption and approval by the City Council.

**Section 5.** This ordinance shall be effective upon its approval as provided by law.

Upon motion by Mayor Carter, seconded by Commissioner Donnell, adopted this 2nd day of November, 2004, by a roll call vote, as follows:

AYES (Names):            Commissioner Donnell, Commissioner Gambill,  
                                 Commissioner Hesse, Commissioner Schilling,  
                                 Mayor Carter

NAYS (Names):           None

ABSENT (Names):        None

Approved this 2nd day of October, 2004.

/s/ Mayor Carter

Mayor Carter

City of Mattoon, Illinois

ATTEST:

APPROVED AS TO FORM

/s/ Susan J. O'Brien

/s/ J. Preston Owen

Susan O'Brien, City Clerk

J. Preston Owen, City Attorney

Recorded in the Municipality's Records on November 4th, 2004.

Mayor Carter declared the motion carried by omnibus vote.

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**CITY OF MATTOON, ILLINOIS**

**SPECIAL ORDINANCE NO. 2004-1048**

**AN ORDINANCE PROVIDING AN INCENTIVE AWARD FOR CERTAIN MANAGEMENT AND SUPERVISORY EMPLOYEES FOR THEIR ROLE IN ACHIEVING AN INCREASE IN THE UNRESERVED FUND BALANCE OF THE GENERAL FUND**

**WHEREAS**, Special Ordinance 2004-1031, which established the 2004/2005 compensation plan for employees of the municipality, continued a moratorium on discretionary salary increases for management and supervisory employees until a year-end audit report shows an increase in the unreserved fund balance of the General Fund; and

**WHEREAS**, the City Council desires to provide an incentive award for certain management and supervisory employees, whose compensation has not been established by employment agreement, to reward them for their role in reducing expenditures sufficient to achieve an increase in the unreserved fund balance of the General Fund as disclosed in the audit for the fiscal year ended April 30, 2004.

**NOW, THEREFORE, BE IT ORDAINED** by the City Council of the City of Mattoon as follows:

**Section 1.** A budget revision in the approximate amount of \$42,678 is hereby approved to enable a one thousand five hundred dollar (\$1,500.00) incentive award to be disbursed prior to the end of the 2004 calendar year to each of the following named management and supervisory employees:

Mike Dow	Rob Newlin	Kurt Stretch	Debbie Sparr
Chris Hartbank	Bill Kingery	Rick Pinnell	Kyle Gill
Tim Daily	Steve Camden	Judy O'Dell	Erin Spurgeon
Kim Leffler	Jim Lang	Dan McClain	Beth Hettinger
Susan O'Brien	Judy Winn	Bruce Grafton	Robin Watkins
LeRoy Harrington	Marsha True	Debbie Crean	Tim Bragg

**Section 2.** The incentive award approved for Maggie Bayne, who has had less than a full year of employment with the municipality as Administrative Assistant for Nuisance Code Enforcement, shall be five hundred dollars (\$500.00).

**Section 3.** The incentive awards authorized by this ordinance shall not alter the base salary for the positions held by the aforementioned employees, which shall remain in effect as established by prior ordinances of the municipality.

**Section 4.** This ordinance shall be deemed published as of the day of its adoption and approval by the City Council.

**Section 5.** This ordinance shall be effective upon its approval as provided by law.

Upon motion by Mayor Carter, seconded by Commissioner Donnell, adopted this 2nd day of November 2004, by a roll call vote, as follows:

AYES (Names): Commissioner Donnell, Commissioner Gambill,  
Commissioner Hesse, Commissioner Schilling,  
Mayor Carter

NAYS (Names): None

ABSENT (Names): None

Approved this 2nd day of November, 2004.

/s/David E. Carter

David E. Carter

City of Mattoon, Coles County, Illinois

ATTEST:	APPROVED AS TO FORM
<u>/s/ Susan J. O'Brien</u>	<u>/s/ J. Preston Owen</u>
Susan O'Brien, City Clerk	J. Preston Owen, City Attorney

Recorded in the Municipality's Records on November 4, 2004.

Mayor Carter declared the motion carried by omnibus vote.

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**CITY OF MATTOON, ILLINOIS**

*SPECIAL ORDINANCE NO. 2004-1049*

**A SPECIAL ORDINANCE APPROVING THE FINAL PLAT OF SUBDIVISION FOR BROOKSTONE SUBDIVISION**

**WHEREAS**, the Mattoon Planning Commission recommended approval of a final plat of this subdivision at a regular meeting held October 25, 2004 subject to conditions that the Developer provide assurance that the subdivision improvements will comply with standards required for storm water detention; and

**WHEREAS**, the Developer has provided sufficient assurance that the subdivision improvements will be constructed to standards prescribed by the Mattoon Code of Ordinances.

**NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF MATTOON, ILLINOIS, AS FOLLOWS:**

**Section 1.** The facts and statements contained in the preamble to this Ordinance are found to be true and correct and are hereby adopted as part of this Ordinance.

**Section 2.** The "**Final Plat of Brookstone Subdivision**", a copy of which is attached hereto and incorporated herein by reference as Exhibit A, is hereby approved.

**Section 3.** The City Council hereby indicates its intent to accept the rights-of-way and easements shown on this plat and to maintain the streets, water distribution and sewer collection systems if they are constructed to standards prescribed by the City of Mattoon's Code of Ordinances.

**Section 4.** The Mayor and the City Clerk are hereby authorized to sign this plat and to do all other things necessary to give effect thereto.

**Section 5.** This ordinance shall be effective upon its publication and approval as provided by law.

Upon motion by Mayor Carter, seconded by Commissioner Donnell, adopted this 2<sup>nd</sup> day of November, 2004, by a roll call vote, as follows:

AYES (Names): Commissioner Donnell, Commissioner Gambill,  
Commissioner Hesse, Commissioner Schilling,  
Mayor Carter

NAYS (Names): None

ABSENT (Names): None

Approved this 2nd day of November, 2004.

/s/ David E. Carter

David E. Carter, Mayor

City of Mattoon, Coles County, Illinois

ATTEST:

APPROVED AS TO FORM

/s/ Susan J. O'Brien

/s/ J. Preston Owen

Susan O'Brien, City Clerk

J. Preston Owen, City Attorney

Recorded in the Municipality's Records on November 4th, 2004.

Mayor Carter declared the motion carried by omnibus vote.

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CITY OF MATTOON, ILLINOIS

***RESOLUTION NO. 2004-2564***

**A RESOLUTION AUTHORIZING PARTICIPATION IN THE COLES COUNTY HAZARDS MITIGATION PLANNING PROGRAM**

**WHEREAS**, the U.S. Federal Emergency Management Agency has made available funds to the Illinois Emergency Management Agency for the development of a State-wide Hazards Mitigation Planning Program; and

**WHEREAS**, the Illinois Emergency Management Agency has made said funds available to local governments for the development of local hazards mitigation plans; and

**WHEREAS**, Coles County has been awarded grant money to develop a County-wide Hazards Mitigation Plan; and

**WHEREAS**, the City of Mattoon Hazards Mitigation Plan, initiated as a part of Project Impact, has not been finalized; and

**WHEREAS**, the incorporated communities of Coles County are eligible to participate with Coles County in the formulation of a County-wide Hazards Mitigation Plan; and

**WHEREAS**, the Mattoon City Council has concluded that it would be in the best interest of the City to join in the Coles County Hazards Mitigation Planning Program in order to maintain eligibility of the City for hazard mitigation implementation grant funds from federal and/or state sources.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL FOR THE CITY OF MATTOON** that the City of Mattoon hereby agrees to participate in the Coles County Hazards Mitigation Planning Program and pledges reasonable staff time of its Departmental Directors to help formulate the County-wide Hazards Mitigation Plan.

Upon motion by Mayor Carter , seconded by Commissioner Donnell, adopted this 2nd day of November, 2004, by a roll call vote, as follows:

AYES (Names): Commissioner Donnell, Commissioner Gambill,

Commissioner Hesse, Commissioner Schilling,

Mayor Carter

NAYS (Names): None

ABSENT (Names): None

Approved this 2<sup>nd</sup> day of November, 2004.

/s/ David E. Carter

David E. Carter, Mayor

City of Mattoon, Coles County, Illinois

ATTEST:

APPROVED AS TO FORM:

/s/ Susan J. O'Brien

/s/ J. Preston Owen

Susan O'Brien, City Clerk

J. Preston Owen, City Attorney

Recorded in the Municipality's Records on November 4th, 2004.

Mayor Carter declared the motion carried by omnibus vote.

## **CITY OF MATTOON, ILLINOIS**

### **ORDINANCE NO. 2004-5194**

#### **AN ORDINANCE AMENDING SECTIONS § 35.15 – § 35.17 OF THE MATTOON CODE OF ORDINANCES TO PRESCRIBE PROCUREMENT PROCEDURES**

**WHEREAS**, it's been discovered that Mattoon's Code of Ordinances regarding procurement procedures are inconsistent with procedures mandated by 65 ILCS 5/4-5-11 and 65 ILCS 5/8-9, the governing state statutes; and

**WHEREAS**, the local code should conform to the state statutes to mitigate risk of having contracts declared null and void.

**NOW, THEREFORE, BE IT ORDAINED** by the City Council of the City of Mattoon as follows:

**Section 1.** Section §35.15 of Chapter 35 of the Code of Ordinances of the City of Mattoon is hereby repealed and reenacted as follows:

#### **§ 35.15 COST ESTIMATES; SPECIFICATIONS**

(A) Except as otherwise provided in this Chapter, all contracts, of whatever character, pertaining to public improvement, or the maintenance of the public property of the municipality involving an outlay of \$1,500 or more, shall be based upon cost estimates and specifications to be approved by the council. When cost estimates exceed \$10,000, contracts shall be awarded by procedures specified by Section §35.16 of this Chapter. This Section applies to expenditures for which shall be payable out of the governmental, enterprise and internal service funds of the municipality or any special funds under the control of any board of managers, board of trustees or directors appointed by general law or ordinances of the municipality.

(B) "Public improvement, or the maintenance of the public property" for the purposes of this Chapter means any permanent improvement upon real property owned by the municipality.

**Section 2.** Section §35.16 of Chapter 35 of the Code of Ordinances of the City of Mattoon is hereby repealed and reenacted as follows:

#### **§ 35.16 PROCUREMENT PROCEDURES**

Any work or other public improvement which is not to be paid for in whole or in part by special assessment or special taxation, when the expense thereof will exceed \$10,000, shall be procured as follows:

(A) If a construction contract:

(1) By a contract let to the lowest responsible bidder after advertising for bids, in the manner provided by Section §35.17 of this Chapter, except that any construction contract may be entered into by the proper officers without advertising for bids, if authorized by a vote of 4 of the 5 council members elected; or

(2) If authorized by a vote of 4 of the 5 council members elected: the Commissioner of Public Works or other proper officers

to be designated by ordinance, may superintend and cause to be carried out the construction of the work or other public improvement by employing exclusively for the performance of all manual labor thereon, laborers and artisans whom the city shall pay by the day or hour, but all material of the value of \$10,000 and upward used in the construction of the work or other public improvement, shall be purchased by contract let to lowest responsible bidder in the manner prescribed by Section §35.17 this Chapter.

(B) Except as otherwise provided by this Section, supplies, equipment and services needed by the municipality valued at \$10,000 and upward shall generally be procured by contract let to the lowest responsible bidder after advertising for bids. Supplies, equipment and services needed by the municipality may be procured without advertising for bids upon a finding that it is in the best interest of the municipality, if authorized by a vote of 4 of the 5 council members elected.

(C) A contract for architectural, engineering or land surveying services shall be awarded without competitive bids in the manner and according to qualifications based selection procedures prescribed by state statute (50 ILCS 510/0.01-510/7).

(D) Departmental Commissioners have delegate authority to approve procurements valued less than \$10,000 without advertising for competitive bids.

(E) Breaking up procurements into smaller increments to avoid threshold amounts on advertising and bidding requirements is prohibited.

(F) Nothing in this Section shall apply to any contract by the municipality with the United States of America, the State of Illinois or any political subdivision of the state. Contracts with these entities may be entered into by the proper officers without advertising for bids, if authorized by a vote of 3 of the 5 council members elected.

(G) Where procedures applicable to expenditure of grant funds are prescribed by rules of the state or federal government or procedures applicable to the expenditure of motor fuel tax funds are prescribed by the Illinois Department of Transportation that may be more prescriptive than procedures defined in this Section, the most prescriptive procedures shall control.

**Section 3.** Section §35.17 of Chapter 35 of the Code of Ordinances of the City of Mattoon is hereby repealed and reenacted as follows:

§ 35.17 ADVERTISING FOR BIDS

(A) Except as provided in Section §35.16 of this Chapter, the City Clerk shall advertise procurement contracts for bid at least once in at least one newspaper of general circulation within the municipality. Such notice shall contain a statement of the nature, character and extent of the procurement, referring to specifications on file, at the City Clerk's office, and the time and place of the bid opening.

(B) The right to reject any or all bids received and the right to award the procurement to the bidder determined most advantageous to the municipality shall be contained in the bidding specifications and published with the advertisement for bids.

(C) Bids may be advertised in other forms of vendor communication devoted to such services and/or sent to vendors who have registered for providing services and/or commodities to the municipality at the discretion of Departmental Directors.

(D) Advertising of procurements shall NOT be required when services and commodities are acquired pursuant to joint purchasing agreements with other entities that advertise and seek competitive bids on behalf the municipality.

**Section 4.** This ordinance shall be deemed published as of the day of its adoption and approval by the City Council.

**Section 5.** This ordinance shall be effective upon its approval as provided by law.

Upon motion by Mayor Carter , seconded by Commissioner Donnell, adopted this 2nd day of November, 2004, by a roll call vote, as follows:

AYES (Names): Commissioner Donnell, Commissioner Gambill,

Commissioner Hesse, Commissioner Schilling,

Mayor Carter

NAYS (Names): None

ABSENT (Names): None

Approved this 2<sup>nd</sup> day of November, 2004.

David E. Carter, Mayor

City of Mattoon,

Coles County, Illinois

ATTEST:

APPROVED AS TO FORM

/s/ Susan J. O'Brien

/s/ J. Preston Owen

Susan J. O'Brien, City Clerk

J. Preston Owen, City Attorney

Recorded in the Municipality's Records on November 4th, 2004.

Mayor Carter declared the motion carried by omnibus vote.

Commissioner Schilling seconded by Commissioner Donnell moved to amend Council Decision Request 2004-380 to read approving an adjustment of \$2,069.02 for a water service leak at Palm Terrace Nursing Home.

Mayor Carter opened the floor for discussion. Mr. Chris Rankin inquired about the adjustment. Mayor Carter and City Attorney/Treasurer Preston Owen responded with the adjustment of \$2,069.02 as calculated with the regular protocol as well as the previous meeting's adjustment calculation involving Mr. Metcalf's billing.

Mayor Carter declared the motion to amend CDR #2004-380 carried by the following vote: YEA Commissioner Donnell, YEA Commissioner Gambill, YEA Commissioner Hesse, YEA Commissioner Schilling, YEA Mayor Carter.

Mayor Carter declared the motion to approve the consent agenda as amended carried by the following vote: YEA Commissioner Donnell, YEA Commissioner Gambill, YEA Commissioner Hesse, YEA Commissioner Schilling, YEA Mayor Carter.

Mayor Carter opened the floor for public discussion. Mr. Meeker commended the City for the posting of City's audit reports on the website.

Mayor Carter seconded by Commissioner Schilling moved to adjourn at 7:20 p.m.

Mayor Carter declared the motion carried by the following vote: YEA Commissioner Donnell, YEA Commissioner Gambill, YEA Commissioner Hesse, YEA Commissioner Schilling, YEA Mayor Carter.

/s/ Susan J. O'Brien

Susan J. O'Brien  
City Clerk